APPENDIX A

[TITLE OMITTED]

Opinion of the
United States Court of Appeals,
Fifth Circuit.

April 17, 1972.

Before WISDOM, GODBOLD and RONEY, Circuit Judges.

PER CURIAM:

[2] The defendant executed a consent form giving permission for search of his residence without a warrant. The form included an acknowledgement by the signatory that he had been informed of his right not to have the premises searched without a warrant, that he was aware of such right to refuse to consent, and that he gave his permission voluntarily and without threats or promises. The consent was not rendered involuntary by reason of the fact that before signing the form the defendant asked the police officer if the officer could get a search warrant and the officer replied "Yes, we probably can." The officer's statement was in response to defendant's inquiry, and it was not a misrepresentation of the facts. United States v. Curiale, 414 F.2d 744 (2d Cir.), cert. denied, 396 U.S. 959, 90 S.Ct. 433, 24 L.Ed.2d 424 (1969).

[3] Nor are ye persuaded that the defendant's will was overborne by the presence of a number of FBI agents and police officers at his residence when the defendant executed the consent form. Though some of those present did possess firearms, there is no indication in the record that the weapons were handled in a threatening manner. The district court concluded that, considering all the circumstances surrounding Savage's consent, including the number of law enforcement personnel, the consent was valid. This finding was not "plainly erroneous, which is our scope of review of facts found at a motion to suppress hearings." United States v. Resnick, 455 F.2d 1127 [5th Cir., 1972].

Affirmed.

APPENDIX B

[TITLE OMITTED]

Opinion of the
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

(July 23, 1973)

Before WISDOM, AINSWORTH and CLARK,
Circuit Judges.

PER CURIAM: This is an appeal from the denial of a motion to vacate judgment and sentence, filed pursuant to the provisions of 28 U.S.C. §2255.

We find no error in the district court's denial of relief concerning Appellant Savage's allegations of trial court errors and ineffective assistance of counsel. However, Savage's court-appointed counsel failed to file a petition for certiorari in the Supreme Court after we affirmed his conviction on direct appeal, United States v. Savage, 459 F.2d 60 (5th Cir., 1972), despite the fact that it now appears his counsel promised Savage that this would be done.[1]

[1]The Appellant attached to his brief a Xerox copy of a letter addressed to him from his court-appointed counsel to this effect, in support of the allegation made in his § 2255 motion.

In a recent case very similar on its facts, we took action to accord the appellants their right to petition the Supreme Court for certiorari. Lacaze v. United States (457 F.2d 1075 (5th Cir. 1972). That is what we now do in this case by recalling our mandate in Savage's direct criminal appeal cited above and by simultaneously issuing a new mandate reaffirming our prior affirmance of the judgment of conviction. Appellant Savage is hereby advised of his renewed right to petition the Supreme Court for certiorari to review this Court's affirmance of his direct appeal. Since the appellant has proceeded without counsel in this forma pauperis appeal, we also appoint counsel to assist him in prosecuting his application for certiorari.

The original judgment of this Court on direct appeal is vacated and a new judgment is entered reaffirming the judgment of conviction, and counsel is appointed for the appellant.

APPENDIX C

INTERROGATION; ADVICE OF RIGHTS
YOUR RIGHTS

Place Miami, Florida

Date 6/7/71

Time 12:20

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

App. 6

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed /s/ Timothy Robins

Witness: /s/ H. Charles Bell

Witness: /s/ A. Frank Spero

Time: 12:21 P.M.

APPENDIX D

6/7/71

(Date)

2262 N.W. 80th

(Location)

I, TIMOTHY ROBINS, having been informed of my constitutional right not to have a search made of the premises hereinafter mentioned without a search warrant and of my right to refuse to consent to such a search, hereby authorize H. CHARLES BELL, and JESUS HOMERO RIVERO, Special Agents of the Federal Bureau of Investigation, United States Department of Justice, to conduct a complete search of my premises located at 2262 N.W. 80th. These agents are authorized by me to take from my premises any letters, papers, materials or other property which they may desire.

This written permission is being given by me to the above-named Special Agents voluntarily and without threats or promises of any kind.

(SIGNED)

WITNESSES:

/s/ H. Charles Bell

/s/ A. Frank Spero

/s/ Timothy Robins